

Section II.—The appointment of forest officers and the organization of the Service;

Section III.—The special responsibilities of forest officers under the Forest and General law;

Section IV.—The special protection extended by law to forest officers;

Section V.—The legal powers of forest officers;

Section VI.—Offences against the lawful authority of forest officers as public servants.

SECTION I.—THE GENERAL NATURE OF PUBLIC SERVICE.

§ 1.—*Who appoints.*

In theory all public servants are appointed by the Crown; but usually the authority to appoint is delegated. The delegation appears in more or less general terms in Statutes or Acts. Sometimes the office is assumed to exist, and the law merely states who is to nominate persons to it, and under what conditions persons can be appointed¹. Sometimes the office only is created, and the person to hold it is detailed by orders embodied in Departmental Codes or Circular Orders². Very often an office may be created generally by name, and then several sets of powers become attached to it by express provision of different laws, for example a Deputy Commissioner in a Non-Regulation Province. There are laws which declare that such officers may be appointed generally. But the Deputy Commissioner has *executive* functions determined by Departmental Government Orders. He has *magisterial* functions under the Criminal Procedure Code, *Civil* powers under the Courts Act of his province and the Civil Procedure Code, *Revenue* powers and various powers connected with Stamps, Excise, Opium, &c., under the laws devoted to this subject. In India all appointments

¹ For example the Police Act V of 1861, which specifies the grades, who is to appoint them, what their duties are, and so forth.

² It is obvious that this is delegation. The Government of India, for example, make certain rules about appointments, which appear in a Departmental Code. This is expressly or impliedly sanctioned by the Secretary of State, who acts as the representative of the Crown.

not specifically provided for, either in the "Act for the better government of India (21-22, Vic. cap. 106) (A.D. 1858), or in some other Statute or Act, are covered by section 30 of the Act alluded to, which runs thus:—

"All appointments to offices, commands and employments in India, and all promotions which by law, or under any regulation, usage, or custom are now made by any authority in India, shall continue to be made in India by the like authority, and subject to the qualifications, conditions and restrictions now affecting such appointments respectively. But the Secretary of State for India in Council shall have the like power to make regulations for the division and distribution of patronage and power of nomination among the several authorities in India, and the like power of restoring³ to their stations, offices or employments officers and servants suspended or removed by any authority in India, as might have been exercised by the said Court of Directors, &c., if this Act had not been passed."

§ 2.—*Appointment of Forest Officers.*

The powers and duties of forest officers are prescribed by law, as far as it is necessary for law to provide them: purely executive and administrative duties in the management of forests, the making of inspection tours, the method of working, the forms of account to be kept and of official returns to be made, can be prescribed by executive rule and do not require legislative interference⁴.

The Forest Act, however, neither creates the different classes of forest officers recognized by their titles, nor says who is to fill these different offices. It takes for granted that certain authorities will have appointed "Forest Officers" in a known or customary order and gradation, and contents itself with assigning powers and duties either to all forest officers generally, or to the forest

³ Hence the admission of appeals from orders dismissing, &c.

⁴ For they do not affect the position or rights of third parties in any way, as is the case when the forest officer makes an *arrest*, or seizes timber.

officer who may be indicated, either by direct words of the Act, or by rules which the Act allows to be made.

The staff⁵ which is to exercise the legal powers of forest officers is appointed under executive orders, which appear in the Departmental Code. In this case also it is clear that all the different appointing authorities are really exercising their powers by delegation from the Crown under the general powers given in the "Act for the better Government of India," already alluded to. The Conservator is empowered for example to appoint a Forester: but this power is delegated to him by the Governor General who has made the Code, who again derives his authority from the Crown, through the Secretary of State in Council.

§ 3.—*Duration of Service.*

As regards the *duration* of public service, this is sometimes fixed by law, sometimes by executive rule, which ultimately means the pleasure of the Government, and sometimes by contract.

For example the Judges of the superior Courts in England are by the Constitution appointed "*quam diu se bene gesserint*"—as long as they conduct themselves uprightly and properly, they cannot be removed at the mere will and pleasure of the Sovereign. But, as of course, the condition of "good conduct" is open to doubt, it is constitutionally held to mean that the Judge shall not be guilty of such misconduct as shall induce *both Houses of Parliament* to present an address to the throne praying for the Judge's removal.

Contract, of course, often plays an important part in the duration of service. Many officers are appointed on condition of entering into an express *covenant* with the Secretary of State or

⁵ Conservators, Deputy Conservators and Assistant Conservators are appointed by the Government of India unless appointed in England by the Secretary of State. Sub-Assistant Conservators and Probationers for the grade are appointed by the Local Government or by the Government of India according to the legal nationality of the candidate. Conservators appoint Forest Rangers, who form the executive staff, and also Foresters and Forest Guards who form the protective staff. Guards also are usually nominated by the Divisional controlling officer.

other authority, which engages their services for a fixed time, or does so for an initial term of years, after which the covenantor becomes subject to certain departmental rules about continuing service up to a certain *age*, or for a certain term of years, after which retirement on pension is compulsory, and so forth.

Where there is no such agreement, appointments are always during the pleasure of Government. In the case of superior service, there are always departmental rules, which contain or imply specific terms regarding the duration of service; and in the case of all inferior appointments not so regulated, the service would be terminable by notice, or by payment of a month's or a quarter's or a year's salary (according to the usual terms), just as any private service might be.

§ 4.—*How Duties and Powers are fixed.*

As regards the *duties* of public servants and the *powers* which are given them that they may carry out their duty effectively, I have already observed that such duties are often, and powers always, prescribed and given by law. Powers that may affect the property or the liberty of third persons must always be given by public authority of the law. Duties which have a similar effect, either as regards the legal obligation of the officer himself, or on the position of third parties, should also be so prescribed; especially those duties, the neglect or misfeasance of which entail a criminal responsibility or liability to a civil suit for damages. But there are many other duties which merely affect the Government as employer and the public servant as the employed: there are also many terms and conditions of service which affect no one to any appreciable extent, besides these two parties. Such duties and conditions are usually not (though the Continental laws, as we shall see, do not always restrict themselves to the same limits) specified in any penal or even civil law, but are left to Departmental Code, Circular Orders, and other methods of conveying "Official Orders" with which every one is familiar. It is always held advisable by our Legislature never to make *special* provisions

of law, still less of law carrying a penalty of a criminal or *quasi* criminal character⁶, where the matter can be adjusted on the ordinary principles of the general law of *contract*.

Consequently the forest officer will perceive that while some of his powers are given him by the Forest law and others by the General Criminal law, and while he is by law prohibited from doing certain things, and in a few cases threatened with criminal penalties, in the greater part of his official duty he is subject only to departmental or general official rules and obligations, which may entail fine, censure, or dismissal (according to his rank and circumstances), and which derive their force from the law of *contract*. Just as it was in the case of the duration of his service, so it is in these matters. If he is what is called a "Covenanted" officer, he will probably have put his name to express clauses binding him to obey the rules and orders of his service, heretofore made, or hereafter to be made, by competent authority. But even if he has not signed a covenant, he is nevertheless held, on obvious principles of general law, in accepting service with Government in any grade or rank, to enter into an *implied contract* to accept the remuneration, terms of service, rules of leave and pension, issued by authority, as well as to render obedience to superiors. He contracts to accept and abide by all service prohibitions and to fulfil all duties, as to inspection, work, keeping accounts, and all other matters whatsoever, which find place in the Codes and circular orders, or are within the power of his superior officers (according to the rules of service) to prescribe⁷.

It may be that a difference, which at best is rather apparent than real, exists between private contracts of service and public. In private service the terms are expressed at the outset and cannot

⁶ This will receive a general illustration when I come to speak of the special rules about appointment of forest officers and compare them with the Police Force.

⁷ It will be observed therefore that the force of a Departmental Code, like that of the Forest Department, is not a "force of law" like the Forest Act or rules made under it; but its force is that it consists of rules of service which forest officers by their *contract* of service are bound to obey.